IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIMBERLY GRILLONE, Plaintiff — **CIVIL ACTION**

v.

CITY OF PHILADELPHIA, et al. : Defendants — NO. **02-CV-6916**

MEMORANDUM AND ORDER

McLaughlin, J. March 10, **2003**

The plaintiff, Kimberly Grillone, has brought suit against the City of Philadelphia and two members **of** the Philadelphia Police Department, Officer Raynice Green' and Sergeant Patrick Lamond. In her complaint, the plaintiff alleges that, while the officers were at **4514** McMenamy Street attempting to remove a dog, Officer Green assaulted the plaintiff twice and then arrested the plaintiff.

The plaintiff alleges violations of 42 **U.S.C.** § **1983.** Specifically, she claims that she was subjected to unreasonable search and seizure, deprived **of** her property and liberty without due process, and subjected to excessive use of force and unlawful

[1]Officer Raynice Green is now, and has been in the past, known as Officer Raynice Howell. Throughout this opinion she shall be referred to as "Officer Green."

arrest. She alleges that the defendants attempted to deprive her access to the courts and due process. The plaintiff also alleges supplemental state law violations.

One of the defendants, the City of Philadelphia, has filed a motion for summary judgment. The Court will grant the motion.

I. Backsround

A. Facts

The parties agree that on March 3, 2001, Officer Green responded to a call about a vicious dog attack. While a sergeant was attempting to put a noose on the dog, a white male, Carl Schnauffer, told him that no one was taking the dog. Officer Green restrained Mr. Schnauffer and eventually arrested him. The plaintiff alleges that Officer Green punched her twice after she requested Officer Green's badge number and stated that she was going to make a complaint against Officer Green. The defendant does not deny that Officer Green punched the plaintiff, but claims that plaintiff told Officer Green that the officers could not lock up Mr. Schnauffer and then grabbed Officer Green. The defendant claims that Officer Green punched the plaintiff once to get the plaintiff to let go. The rest of the facts provided by the parties for the purposes of this motion are undisputed.

After punching the plaintiff, Officer Green arrested her and charged her with harassment. The plaintiff had a red mark on her face after she was punched but there were no cuts or bleeding. Pl. Ex. B, at ***119-139.***

It is departmental policy that all arrestees in need of immediate medical care be transported to the hospital. It is also policy that all detainees be asked a series **of** questions which are noted on a 'medical checklist." This checklist is then given to the "turnkey" **or** "CBI person" who types it up and enters it into the "PAR" system. Officer Green asked the plaintiff the list of questions and prepared a medical checklist. This original checklist was different from the checklist that was typed up and logged into the computer by another officer[2]. Pl. **Ex. D; E.**

Officer Green stated that she noted the red mark on the plaintiff's face and checked "yes" for the question "does detainee have obvious serious medical **problems"** on the original checklist. The original did not say "medical alert" or "fake medical." The typed version of the medical checklist did not include the information about the red mark, stated "no" for the

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[2] The original checklist filled out **by** Officer Green is unavailable; the record evidence about the contents of the original checklist comes from Officer Green's testimony.

serious medical problems question, and had the statements "medical alert" and "fake medical" included in the remarks. Pl. Ex. B, at 119-139; E.

Most of the remaining record evidence presented relates to events that occurred prior to this March 2001 incident. According to an Internal Affairs Division ("I.A.D.") investigation report, in August of 2000, another police officer, Andrea Walker reported that some unknown person dumped an unknown liquid, possibly bleach, into her locker. Officer Walker also reported that she had had an ongoing dispute with Officer Green. Officer Walker had dated Officer Green's estranged husband, Donald Green, on occasion for the past five years. According to the report, Officer Walker stated that Officer Green, when she found out that Officer Walker had been dating Mr. Green, stopped working with and speaking to Officer Walker. Officer Walker stated that her tires had been cut by an unknown person, and that Officer Green had been hostile to her. Id.

The report also states that Officer Walker stated that Officer Green threatened to push Officer Walker down the stairs, intentionally bumped into Officer Walker at work, harassed Officer Walker, and called her names. Id.

According to the report, Officer Green admitted that there had been problems between Officer Green and Officer Walker,

and that the problems stemmed from their respective relationships with Donald Green. Officer Green stated that, though she had filed for divorce from Donald Green in 1999, she reconciled with him in March of 2000. Officer Green admitted calling Officer Walker names, but denied all the other accusations. Id.

The report also states that Donald Green made a complaint with Lieutenant Carl Ruhland, stating that Officer Green harassed Mr. Green at his residence, at work and by phone. Id.

The I.A.D. sustained the charge that Officer Green engaged in unprofessional behavior by bumping into, brushing against, and using threats against Officer Walker. The report did not sustain the allegation that Officer Green poured bleach into Officer Walker's locker. Officer Green was never disciplined in any way as a result of these findings. Id., Pl. Ex. B., at 91.

Officer Green stated in her deposition that one protective order had been lodged against her, but it is unclear from the record who lodged that protective order against her, whether it was sustained, and when it was lodged. Pl. Ex. B, at 108.

On February 19, 2002, Officer Green was given a satisfactory performance report by a sergeant. The performance

report stated that Officer Green had performed her duties in "an exemplary manner" and that she received a "satisfactory" rating for both "relationship with people" and "promotional potential." Pl. Ex. C.

B. Motion for Partial Summary Judgment

The defendant, City of Philadelphia, has filed a motion for partial summary judgment. The City alleges that it has immunity from the state court claims under the Political Subdivision Tort Claims Act. It also alleges that it has no liability for the § 1983 claims because the plaintiff has not met the requirements of Monell.

The Court agrees, and the plaintiff did not dispute, that the defendants have immunity on the state law claims; summary judgment is granted to the City on these claims.

Although the plaintiff has raised several theories of liability against the City under § 1983 in her complaint, she raises only one issue in her opposition to the motion for summary judgment: that the City of Philadelphia is liable under theories of municipal liability for its failure to adequately discipline, train, supervise, and investigate its police officers concerning rights of citizens." P. Mem. p. 1.

11. Monell

Under Monell v. Dept. of Social Svc., **436 U.S.** ***658*** **(1978),** a municipality cannot be held liable through respondeat superior principles; the city must itself be the moving force behind the constitutional violation.

In order to prove municipal liability under Monell. the plaintiff must identify a policy or custom, attribute that custom **to** the municipality, and show a causal link between the policy or custom and the deprivation of the plaintiff's constitutional right. Losch v. Parkesburq, **736** F.2d **903, 910** (1984).

A. Custom or Policy and Attribution to the City

The plaintiff in this case alleges that she has properly identified a custom or policy by showing that the City of Philadelphia failed to discipline, train, supervise, and investigate Officer Green in a way that contributed to the use of excessive force on the plaintiff[3].

[3]The plaintiff also alleges that the City is liable because its employees failed to follow the directives mandating hospital care for injured detainees; this is precisely the type of claim Monell excludes. As the plaintiff points out, police department directives mandate that the medical form be filled out and that all injured detainees be transported to the hospital. There is no evidence ***of*** any custom or policy in the department that these directives were not to be adhered to or that the mistakes on the

The Supreme Court has indicated that there are limited circumstances in which municipal liability under § 1983 can be predicated on a "failure to train." E.g., City of Canton v. Harris, 489 **U.S.** 378 (1989). To show liability for a policy or custom of failure to train, the plaintiff must show that a city policymaker acted with deliberate indifference to the rights of persons with whom the police came into contact[4]. Simmons v. City of Philadelphia, et al., 947 F.2d 1042, 1069 (3d Cir. 1991).

1. Policymaker

Who the relevant policymaker is is a matter of law for the Court to decide. Jett v. Dallas Indep. Sch. Dist., 491 **U.S. 701,** 737 (1989). The Court is to review the relevant materials, including state and local law and custom or usage having the force **of** law and identify which individuals or bodies speak with final policymaking authority for the local government actor. Id. It is only once this policymaker is identified that the jury can determine if the decision of that policymaker caused the harm to

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medical form were the result of anything other than the actions of the police department officer who transcribed the report. The plaintiff herself calls this officer's decision "unilateral." Without additional evidence, this claim cannot warrant municipal liability under Monell.

[4]This same standard applies to alleged liability based on failure to supervise and investigate. Groman v. Township of Manalapan, 47 F.3d 628, 637 (3d Cir. 1995).

the plaintiff. Id.

Pursuant to the Philadelphia Home Rule Charter, Article III, § **3-101,** the police commissioner is to perform all **of** the duties assigned to the police department; the commissioner is the policymaker for the police department. See Hernandez v. Borough of Palisades Park Police Dep't, 2003 **U.S.** App. **LEXIS** 1638 (3d Cir. 2003) (because the New Jersey statute and the police manual placed all authority for the running of the department in the police chief, he was the policymaker for the police department).

Other officials who are not directly given policymaking power by law may still be policymakers if they are delegated final policymaking authority by a policymaker. Pembauer v. Cincinatti, 475 **U.S.** 469, 483 (1986). The plaintiff, however, has not provided any evidence of custom, usage, or police department regulations that would indicate that the commissioner has delegated his final policymaking authority to anyone else in the department. The plaintiff has not shown that anyone other than the police commissioner could be a relevant policymaker'.

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[5] If the plaintiff had provided any facts that would show that the policy or custom she is alleging is so well-settled as to have the force of law, she would not have to identify a specific policymaker responsible for creating or ratifying the policy of custom. E.g., Bielevicz v. Dubinon, 915 F.3d 845 (3d Cir. 1990). The plaintiff has not, however, alleged or provided

2. Deliberate Indifference

Once a relevant policymaker has been identified, the plaintiff must prove deliberate indifference to the rights of those with whom the police come into contact in order to succeed under a failure to train theory. City of Canton, 489 **U.S.** at **388**. The fact that a particular officer may be unsatisfactorily trained will not alone fasten liability on the city; nor will an otherwise soundly administered training program that has been occasionally negligently administered. Id. at **390**.

In Bd. of County Comm'rs of Bryan County v. Brown, 520 U.S. 397 (1997), the Court held that a failure to train would rise to the level of deliberate indifference where the policymaker ignored a known or obvious risk. Id. at 409.

The plaintiff has not shown deliberate indifference. Because the police commissioner is the only relevant policymaker, the plaintiff's claim fails because there is no evidence that the commissioner ignored a known or obvious risk.

The commissioner did not ignore a known risk. There is no evidence that the commissioner or any other high ranking officer knew about or was directly involved in handling Officer

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evidence that the policy or custom she is alleging is either so well-settled or has sufficient force of law within the department that it can be fairly attributed to municipal policymakers in general.

Green's case. Nor is there evidence, such as evidence **of** prior incidents of unconstitutional behavior by Officer Green or other officers, that would have put the commissioner on notice that more training or supervision was needed to avoid constitutional violations.

Because there is no evidence of a known risk, the only way that the plaintiff's deliberate indifference claim can succeed is if a reasonable jury could find that there was an obvious risk of excessive force if more training and supervision was not provided to the officers. The plaintiff has provided evidence of **only** one series of incidents regarding one officer, Officer Green, as evidence that more training or supervision was necessary.

The plaintiff argues that Officer Green's conduct was so outrageous, violent, or risky that it would have been obvious that additional training or supervision was necessary to avoid the excessive use of force. There is no evidence, however, that the commissioner knew about Officer Green's conduct; the risk could not have been obvious **to** him. Nor is there evidence that there were widespread or repeated incidents **of** similar violence between members of the squad or members of the squad and the public which would have made it obvious to the commissioner that more training or supervision was necessary.

No reasonable jury could find that the police "so often" violated constitutional rights or exhibited violent behavior that the need for further training to avoid the use of excessive force on civilians was plainly obvious. E.g., City of Canton, 489 **U.S.** at **390** n.10. The plaintiff has not shown that the commissioner ignored an obvious risk.

Because the plaintiff has not alleged sufficient facts to show that the commissioner or any other policymaker was deliberately indifferent by ignoring a known or obvious risk, summary judgment is warranted under Monell[6].

An appropriate order follows.

[6]In addition, it is questionable whether Officer Green's behavior towards her estranged husband and his girlfriend would have constituted a pattern sufficient to make it obvious that failing to train her more would result in Officer Green using excessive force on an arrestee.

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ORDER

AND NOW, this 10th day of March, 2003, upon consideration of the Motion for Partial Summary Judgment filed by the defendant, City of Philadelphia, (Docket No. 10) and the plaintiff's response thereto, IT IS HEREBY ORDERED that the motion is GRANTED and JUDGMENT IS HEREBY ENTERED for the defendant, City of Philadelphia, and against the plaintiff for the reasons set forth in a memorandum of today's date.

BY THE COURT:

Mary A. McLaughlin

MARY A. MCLAUGHLIN, J